

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

Conservatorship of the Person and Estate of
MARIA LUISA FAUSTINO.

MARIA J. SOUSA, as Conservator, etc.,

H025159

Petitioner and Appellant,

(Santa Cruz County
Superior Court
No. PR42349)

v.

DIRECTOR OF DEVELOPMENTAL
SERVICES, as Conservator, etc.,

Objector and Respondent.

_____ /

At issue in the instant case is whether the trial court properly appointed respondent Director of Developmental Services (Director) as the conservator of Maria Luisa Faustino. Director and appellant Maria J. Sousa, Faustino's mother, filed competing petitions to be appointed conservator. On appeal, Sousa contends: (1) the superior court lacked jurisdiction because the Director's petition and citation were never served on Faustino; (2) the Director had no standing to petition for conservatorship because he was not properly nominated; (3) the Director's petition is not authorized by statute; (4) the Director did not timely file the

required report and capacity declaration; and (5) the trial court did not advise and consult with the proposed conservatee. For the reasons stated below, we affirm.

I. Statement of Facts

Faustino is a 29-year-old developmentally disabled woman, who has moderate mental retardation and a severe speech impediment. She has lived with Sousa all of her life. Faustino has been a client of the San Andreas Regional Center (Regional Center) for the past 11 years. The Regional Center organizes support services for developmentally disabled people. Faustino has also been a client of the Pajaro Valley Training Center (PVTC), which provides training in daily living skills, pre-vocational skills, and communication.

While at the Regional Center and PVTC, Faustino has worked with and developed personal relationships with staff, including Debra Bell, her speech therapist, Magda Borges, activities service supervisor, and Jessica Milligan, client's advocate. Initially, Faustino was shy and had trouble communicating simple concepts. However, Bell taught her how to use the McCaw 3+ device, which allowed her to communicate on various topics using icons programmed into the device. As Faustino mastered the device, it became clear that her cognitive abilities had been underestimated.

Approximately two years ago, staff at the Regional Center and PVTC noticed that Sousa began restricting Faustino's participation in activities and programs. Sousa limited Faustino's attendance at the day program at the Regional Center to two out of five days per week. Sousa also limited how often Faustino could attend outings with peers. Faustino clearly communicated that she enjoyed participating in these activities and programs. Faustino also regularly communicated to staff that she wanted to move out of Sousa's home and live with peers. Staff attempted to discuss these issue with Sousa, but she refused.

On December 5, 2001, Sousa filed a petition for conservatorship. The trial court appointed the public defender to represent Faustino. On March 11, 2002, Santi Rogers, executive director of the Regional Center, nominated the Director to be appointed as limited conservator. On May 17, 2002, the Director filed a petition for limited conservatorship of Faustino. On September 23, 2002, the trial court granted the Director's petition. Sousa has filed a timely appeal.

II. Discussion

A. Jurisdiction

Sousa first contends that the trial court lacked jurisdiction over the Director's petition, because the petition and citation were never served on Faustino.

Sousa does not challenge the trial court's subject matter jurisdiction, which is established by Probate Code section 2200: "The superior court has jurisdiction of guardianship and conservatorship proceedings." Instead, she challenges notice, which is an aspect of personal jurisdiction. (See, e.g., *Brown v. Williams* (2000) 78 Cal.App.4th 182, 186-187, fn. 4.) However, only the person to whom jurisdiction attaches can challenge personal jurisdiction. (See, e.g., *Estate of Hart* (1984) 165 Cal.App.3d 392, 395-397.) Thus, Sousa lacks standing to assert defective notice on behalf of Faustino. Moreover, here Faustino waived any objections to personal jurisdiction by making a general appearance at the trial. (See *Marriage of Torres* (1998) 62 Cal.App.4th 1367, 1381.) Accordingly, there is no merit to this contention.

B. Nomination of the Director

Sousa next contends that the Director has no standing to petition for conservatorship, because he was not properly nominated.

Health and Safety Code section 416.5 provides: "The director may be nominated by any one of the following to act as guardian or conservator for any

developmentally disabled person; . . . [¶] (a) A parent, relative or friend. [¶] (b) The guardian or conservator of the person or estate, or person and estate, of the developmentally disabled person to act as his successor. [¶] (c) The developmentally disabled person.”

Here Santi J. Rogers, executive director of the Regional Center, nominated the Director to be appointed as limited conservator of Faustino. Sousa contends that Rogers’ nomination was actually a nomination by the Regional Center, and that the Regional Center may not nominate the Director, because it is the Director. We first note that Sousa concedes that the Regional Center is a private nonprofit corporation. Thus, the Regional Center is not the same entity as the Director. Second, nothing in the statute suggests that a staff member of the Regional Center cannot be a “friend” of the proposed conservatee for the purpose of nomination. As the record in this case establishes, Faustino’s “friends” include some of the staff members of the Regional Center, who have been interacting with her for many years. Thus, the Director was properly nominated in the instant case.

C. Health and Safety Code Section 416.23

Section 416.23 provides: “This article does not authorize the care, treatment, or supervision or any control over any developmentally disabled person without the written consent of his parent or guardian or conservator.” Sousa contends that this statute prohibits the Director’s petition, because she did not give her written consent. However, section 416.23 applies to children as well as adults, who are already conserved. It does not apply to legally independent, unconserved adults, such as Faustino.

D. Welfare and Institutions Code Section 4620.1

Welfare and Institutions Code section 4620.1 provides: “The Legislature recognizes the ongoing contributions many parents and family members make to the support and well-being of their children and relatives with developmental

disabilities. It is the intent of the Legislature that the important nature of these relationships be respected and fostered by regional centers and providers of direct services and supports.” Sousa contends that the Director’s petition is an attempt to remove Faustino from her mother’s care in violation of section 4620.1. There is nothing in the record to indicate that the Director’s petition was disrespectful of Sousa’s relationship with Faustino. The Director filed the petition only after repeated attempts were made to include Sousa and other family members in planning for Faustino’s future. Despite these efforts, Sousa refused to acknowledge Faustino’s right to work toward increasing her independence. Thus, there is no merit to Sousa’s contention.

E. Health and Safety Code Section 416.8

Health and Safety Code section 416.8 provides, in relevant part, that the trial court “shall be provided by the regional center with a complete evaluation of the developmentally disabled person for whose protection the appointment is sought. The report shall include a current diagnosis of his physical condition prepared under the direction of a licensed medical practitioner and a report of his current mental condition and social adjustment prepared by a licensed and qualified social worker or psychologist.” The trial court also must be provided with a capacity declaration. (Cal. Rules of Court, rule 201.1.)

Sousa contends that the report and capacity declaration were not provided to the trial court prior to its decision.

In the instant case, both the Director and Sousa introduced extensive evidence at trial as to Faustino’s diagnosis and her current mental condition and social adjustment. At the conclusion of the trial on June 20, 2002, the trial court indicated that it was “inclined” to grant the Director’s petition. On July 29, 2002, the Director provided the trial court with the capacity declaration. On July 31, 2002, the Director provided the trial court with the section 416.8 report. On

September 23, 2002, the trial court issued the order appointing the Director as conservator. Thus, assuming the trial court erred in not receiving the report and the capacity declaration at trial, the error was harmless. Since Sousa does not challenge the contents of either the report or the capacity declaration, and the trial court considered both the report and capacity declaration prior to issuing its order, it is not reasonably probable that there would have been a more favorable result for Sousa had these documents been introduced at trial. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

F. Advisements and Consultation with Proposed Conservatee

Sousa contends that the trial court erred by failing to advise and consult with Faustino before appointing the Director as conservator.

Prior to the establishment of a conservatorship, the trial court shall inform the proposed conservatee as to “[t]he nature and purpose of the proceeding,” “[t]he establishment of a conservatorship is a legal adjudication of the conservatee’s inability properly to provide for the conservatee’s personal needs or to manage the conservatee’s own financial resources,” “[t]he proposed conservatee may be disqualified from voting,” “[t]he identity of the proposed conservator,” “[t]he nature and effect on the conservatee’s basic rights,” and that “[t]he proposed conservatee has the right to oppose the proceeding, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.” (Prob. Code, § 1828.) After so advising the proposed conservatee, the trial court is required to consult

with the proposed conservatee to determine his or her opinion as to the establishment of the conservatorship. (*Ibid.*)¹

Assuming that Sousa has standing to raise this contention on appeal, “the advisements required under Probate Code section 1828 were created by the Legislature and, consequently, are not constitutionally required . . . the right to these advisements can . . . be validly waived by the proposed conservatee’s counsel.” (*Conservatorship of Mary K.* (1991) 234 Cal.App.3d 265, 271.) Here Faustino’s counsel waived her right to the section 1828 advisements. Accordingly, the trial court did not err by failing to advise and consult Faustino.

III. Disposition

The order is affirmed.

Mihara, J.

We concur:

Elia, Acting P.J.

Wunderlich, J.

¹ Health and Safety Code section 416.95 also requires the trial court to so inform and consult with the proposed conservatee prior to appointing the Director of Developmental Services conservator.